DOCUMENT RESUME

ED 357 114 UD 029 190

AUTHOR Barry, Travis
TITLE Minority Scholarships: Affirmative Action or Reverse Discrimination?
INSTITUTION ASPIRA Association, Inc., Washington, DC. National Office.
SPONS AGENCY Anheuser-Busch Companies, Inc., St. Louis, MO.
PUB DATE 92
NOTE 8p.
AVAILABLE FROM Publications, ASPIRA Association, Inc., National Office, 1112 16th Street, N.W., Suite 340, Washington, DC 20036 (first copy free, additional copies $0.50 each).
PUB TYPE Collected Works - Serials (022)
JOURNAL CIT ASPIRA Issue Brief; 1992

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS Access to Education; *Affirmative Action; Civil Rights; Court Litigation; Demography; *Educational Legislation; Federal Legislation; Higher Education; *Hispanic Americans; Minority Groups; Policy Formation; Position Papers; *Public Policy; Racial Discrimination; Reverse Discrimination; *Scholarship Funds
IDENTIFIERS Controversy; *Department of Education; Latinos; Minority Scholarships; Policy Analysis

ABSTRACT

This brief analyzes a recent shift in the U.S. Department of Education's policy on minority designated scholarships and explores the issues in the national debate on these scholarships. An overview of the controversy notes the Title VI section of the Civil Rights Act of 1964 that outlaws racial discrimination where federal funds are received. A following section reviews the history of the current situation, which began in December of 1990 when a Department of Education official announced that minority designated scholarships were in violation of civil rights laws. The brief goes on to outline the traditional policy position that minority scholarships offset the effects of historical societal discrimination and the new policy position that such scholarships discriminate unacceptably against non-minority students. A discussion of affirmative action looks at its purpose and arguments about its effects. An analysis of legal issues discusses legislation as well as recent court decisions. A final section argues that the root of the issue is an understanding of the effect and necessity of affirmative action. Side bars list arguments for and against minority designated scholarships and offer statistics on Hispanics in higher education. (JB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED357114

ASPIRA ISSUE BRIEF

Minority Scholarships: Affirmative Action or Reverse Discrimination?

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☒ This document has been reproduced as received from the person or organization originating it

☐ Minor changes have been made to improve reproduction quality

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy

"PERMISSION TO REPRODUCE THIS MATERIAL IN **OTHER THAN PAPER COPY** HAS BEEN GRANTED BY

J. PETROVICH
ASPIRA

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)"

UD029703

ASPIRA. ISSUE BRIEF

Minority Scholarships: Affirmative Action or Reverse Discrimination?

Introduction

The Department of Education reports that over three million minority students were enrolled in institutions of higher education in 1990, of a total of nearly 14 million students. Of these three million, the American Council on Education reports that only about 45,000 received minority-designated scholarships--financial aid from any source which is available only to minority students. Nonetheless, the Department of Education has recently sought to restrict such scholarships, a move that has been criticized as illogical and illegal, unnecessary and harmful, political and even racist. The debate over such scholarships continues. Its outcome will have a weighty impact on educational opportunity for minority students.

The Latino community is particularly concerned by the potential effects on Latino students of the Department's proposed reinterpretation of the law. Latinos remain severely underrepresented in higher education. Although more Latinos are now enrolled in college because of the tremendous growth of their population, they are still far behind non-Latinos in proportional college enrollment and completion. Latinos composed 11.1% of the 18-24 year old population in 1990 but made up only 5.5% of college students. With higher education costs rising eight times as fast as Latino family income in the 1980s and federal education funding falling 24% in real dollars in the same period, minority-designated scholarships have become an even more crucial element of minority access to education.

What motivated the Education Department's policy shift, and what are the arguments for and against the continuation of minority-designated scholarships?

The controversy

The current debate over minority-designated scholarships concerns two areas:

1) whether such financial aid is currently permitted or prohibited by old and new interpretations of applicable law, and
2) whether such aid is presently necessary or desirable.

Title VI of the Civil Rights Act of 1964 states, "No person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal assistance." Opponents of minority-designated scholarships read this section strictly. They argue that minority-designated scholarships offered by institutions receiving federal funding are illegal if they exclude non-minority students from eligibility.

The original intent of Title VI and indeed of the Civil Rights Act as a whole was to prevent private racial discrimination, specifically against minorities, from being sanctioned with federal funds. Proponents of minority-designated scholarships point to the Department of Education's regulations for implementation of Title VI, which require institutions that have historically discriminated to "take affirmative action to overcome the effects of past discrimination." Even those institutions which historically have not discriminated are required to "take affirmative action to overcome the effects of conditions which have resulted in limited participation" by minorities. Included in such affirmative actions, argue proponents, are minority-designated scholarship programs.

Hence it seems the Department of Education's traditional implementation of Title VI conflicts with the letter, while conforming to the spirit, of the Civil Rights Act. Minority-designated scholarships are simultaneously mandated and prohibited. The legal issue, then, comes down to a question of whether the law should be strictly applied in favor of non-minority students, or more loosely construed according to its purpose, in favor of only minority students.

History

This current and most recent episode in the minority-designated scholarship controversy arose in December 1990, when Michael Williams, the Education Department Assistant Secretary for Civil Rights, announced that most

©1992, The ASPIRA Association, Inc. ASPIRA was founded in 1961 to promote education and leadership development and to advocate on behalf of Puerto Rican and Latino youth.

BEST COPY AVAILABLE

UD029190

minority-designated scholarships are technically in violation of civil rights laws. Upon assuming his post in 1991, Secretary of Education Lamar Alexander refrained from enforcing that rule until the Department developed a more tailored policy position. A proposal for that position was issued on December 4, 1991.

The proposal indicated that the Department would abandon its longstanding loose construction of Title VI in favor of the more strict interpretation, with certain exceptions. Institutions receiving federal funding would be forbidden from using race as a criterion, even one among many, for any scholarship of public or institutional funds, unless ordered to do so by a court or administrative agency or under Congressional exception. Such a reinterpretation would effectively prohibit most educational scholarships awarded on the basis of race, color, or national origin.

At the request of several Senators, including Joseph Biden, Paul Simon, and Edward Kennedy, the Education Department agreed in June 1992 to defer implementation of the reinterpretation until the General Accounting Office completes a comprehensive study of the matter. The GAO study is to examine minority-designated and other such scholarship programs, their role in recruitment and retention of minority students, and the sources of such scholarship funds. Results are due by spring of 1993. In the meantime, several Congressional efforts to affirm the legality of minority-designated scholarships, by Senator Paul Simon, Congressman Craig Washington and other legislators, have been introduced and later abandoned.

In October, 1992, the Department of Education Office of Civil Rights released another finding stating that affirmative action admissions policies at the University of California at Berkeley also violated the Civil Rights Act of 1964. In the debate following, Education Department officials again declared that their decision would have little effect on the nation's minorities, while college officials and civil-rights leaders charged that the action endangered programs to attract more minority students to higher education.

This **Issue Brief** was written by Travis Barry under the direction of Janice Petrovich for the ASPIRA Association, Inc., National Office. Special thanks to the Everett Philanthropic Fund, which funded Mr. Barry's time through their Public Service Internship Program. Edited by Elizabeth Weiser Ramírez. This document was produced by the ASPIRA Institute for Policy Research, which receives core funding from the Anheuser-Busch Companies.

Thus the debate over interpretation of the Civil Rights Act in higher education continues. **At the core of the debate is the contemporary role of affirmative action in education.**

The traditional policy position

The primary purpose of minority-designated scholarship programs is to offset the effects of historical societal discrimination in order to allow minority students to compete, achieve and succeed on an equal basis with their non-minority peers. Established Department regulations have long held that minority-designated scholarships conform with Title VI if they serve either of two purposes:

1) **remedying discrimination** - overcoming the lingering effects of discrimination by the particular academic institution; or
2) **creating diversity** - overcoming the overall underrepresentation of minorities in certain professions or higher education as a whole.

The new policy position

The Department of Education now contends that minority-designated scholarships discriminate unacceptably against non-minority students as they promote the advancement of minority students. Opponents of minority-designated scholarships insist that the necessity for such programs has passed because overt societal and institutional racism has been largely eradicated and considerable gains made in racial diversity of educational institutions. Defenders of such scholarships argue that this reinterpretation would turn Title VI against those persons it was designed to protect. They maintain that covert and institutionalized racism remain such serious impediments to minority advancement, and that diversity is still so lacking, that minority-designated programs are both necessary and proper.

Affirmative action's purpose

The opponents of minority-designated scholarships note that as a result of past affirmative action programs, minorities are presently better represented in the professions: medicine, law, engineering, and so forth. Proponents of minority-designated scholarships counter that despite modest minority gains in the professional fields there still exists a considerable racial gap which could and should be remedied by minority-designated scholarships. They argue that since minority-designated

BEST COPY AVAILABLE

Choosing Sides: Arguments

The opposing contentions in the minority-designated scholarship controversy seem less arguments than contradictions. Until the reality of the effects and side effects of such programs can be established, the debate will remain on the level of simple contradiction.

AGAINST MINORITY SCHOLARSHIPS	FOR MINORITY SCHOLARSHIPS
Minority scholarships are prohibited by the Civil Rights Act of 1964.	Minority scholarships are mandated by the Civil Rights Act of 1964.
Racism has decreased, eliminating the need for minority scholarships.	Racism still exists, perpetuating the need for minority scholarships.
Diversity has increased, eliminating the need for minority scholarships.	Diversity is lacking, perpetuating the need for minority scholarships.
Minority representation in the professions has increased.	Minority representation in the professions is still low.
The focus in financial aid should be on disadvantage, not on race per se.	The focus is on disadvantage, since race is tantamount to disadvantage.
Race should not be a factor in financial aid considerations.	Race is only one factor of many in financial aid considerations.
Minority scholarships are comparable to admissions quotas, and hence prohibited by *Bakke*.	Financial aid is unrelated and subsequent to admissions decisions, hence *Bakke* is inapplicable.
There exist no comparable exclusive majority-race scholarships.	Alumni and some ethnic scholarships are essentially majority-designated.
Minority scholarships disturb campus race relations and frustrate majority-race students.	Minority scholarships do not significantly disturb race relations or frustrate majority-race students.
Minority scholarships discourage majority-race candidates from applying for admission.	Minority scholarships encourage minority candidates to apply for admission.
Minority scholarships have no net effect on aggregate financial aid, and would be redesignated if prohibited.	Minority scholarships create a net increase in aggregate financial aid, and would be discontinued if prohibited.
Present grantholders would not lose their scholarships, and only 45,000 students currently benefit from minority scholarships.	No new grants would be made, and minority scholarships encourage even those minority students who do not receive them.
Minority students are presently able to compete for general financial aid on an even basis.	Minorities are not currently able to compete on an even basis due to a societal disadvantage.

Hispanics in Higher Education: Facing the Facts

Population/Participation in education

Population growth, 1980-1990:	Hispanic	**53%**	
	Non-Hispanic	**7%**	[U.S. Bureau of the Census, 1990]
Hispanics per general population, 1990:	National	**9.0%**	[Census Bureau, 1990]
	College-age	**11.1%**	[Census Bureau, 1991]
	College-enrolled	**5.5%**	[Education Department, 1991]
Increase in college enrollment, 1980-1990:	Hispanic	**60.6%**	
	White	**8.6%**	
	Black	**10.5%**	[U.S. Department of Education, 1991]
Bachelor's degrees conferred, 1989:	Hispanic	**2.9%**	
	White	**84.5%**	
	Black	**5.7%**	[U.S. Department of Education, 1991]

4-Year college completion, age 25+:

	1970	1990	
Hispanic	**5%**	**9.2%**	
Non-Hispanic	**11%**	**21.3%**	[Census Bureau, 1991]

Income

Median household income, 1991:	Hispanic	**$22,330**	
	Non-Hispanic	**$30,513**	[Census Bureau, 1991]
Increase in median family income, 1980-1989:	Hispanic	**5.9%**	
	Non-Hispanic	**8.1%**	[Census Bureau, 1990]

Cost of education/Federal assistance to education

Increase in cost of attendance at four-year public colleges, 1981-1991: **85%** [The College Board, 1992]

Increase in federal grants for postsecondary education, 1981-1991: **47%** [The College Board, 1992]

Grant/loan balance of federal postsecondary education funding: [The College Board, 1992]

	1981	1991
Grants	**52%**	**48%**
Loans	**45%**	**49%**

scholarships are intended to remedy the present effects of past discrimination, so long as minority students are either subject to present discrimination or suffer an initial disadvantage as a result of past discrimination, there exists a logical basis and contemporary need for minority-designated scholarships.

A more theoretical argument centers upon the purpose of financial aid itself. In a strict sense, financial aid is intended to make education accessible to those students who suffer financial disadvantage. Therefore, minority-designated scholarship opponents contend that any financial aid considerations should focus only upon financial hardship and not upon race. Advocates of minority-designated scholarships maintain that financial constraint is only one disadvantage intended to be offset by financial aid. They further note that the focus of financial aid considerations for minority students is already on disadvantage, since race is often tantamount to economic disadvantage.

One faction of scholarship opponents insists that race should play no role in scholarship decisions and hence that no student should be excluded from consideration for any scholarship. The pro-scholarship side points out that race is only one factor among many in the minority-designated scholarship selection process, along with financial need, academic performance, leadership, and so forth. There exists no scholarship, they emphasize, whose sole criterion is race.

Affirmative action's effects

Opponents of minority-designated scholarships produce another argument: there exist no corresponding non-minority-designated scholarships. The counter argument heard is that, statistically, non-minority students are less in need of scholarship aid and that many scholarships exist which are dedicated to or discriminate in favor of non-minority students. For example, scholarships sponsored by non-minority ethnic groups, such as Italian-American organizations, are not awarded to minority students. Alumni legacies, reserved for relatives of alumni, seldom go to minority students since past discrimination excluded their elders from education. Scholarships based on performance on standardized tests also elude minorities, who tend to score lower on such tests.

Another aspect of the opposition to minority-designated scholarships focuses on the effect of such programs on those students who do not receive grants. Opponents of such scholarships contend that explicit attention to the needs of minority students leaves non-minority students feeling frustrated, disturbs campus race relations and thus interferes with the academic atmosphere, and discourages non-minority candidates from applying for admission. Proponents of such scholarships argue that such is not the case, or that any such effect is heavily outweighed by the positive effect on the self-image of minority students who receive grants and even of minority students who do not. The incentive of such scholarships encourages minority students to apply for admission and to enroll if accepted. Minority-designated scholarships show minority students, recipients or not, that they are a recognized priority for the educational institution.

The net effect of minority-designated scholarship programs on total financial aid levels is also undetermined and contended. Opponents of minority-designated scholarships believe that if the scholarships were prohibited, the funding could simply be redesignated for new, race-neutral grants, resulting in no net loss of available financial aid. Proponents of the scholarships theorize that minority-designated scholarships represent a net increase in total financial aid. If prohibited, funding would likely be discontinued by the benefactors, who intended their generosity to promote affirmative action. This would leave more students to compete for less overall financial assistance and could jeopardize the existence of non-profit scholarship-granting organizations.

Legal arguments

The legal standing of minority-designated scholarships is nearly as cloudy as their position in public policy. In 1978 the Supreme Court held in *Regents of the University of California v. Bakke* that Title VI prohibits minority quotas in medical school admissions. Since then, it has been held generally--and by the Department of Education until recently--that although Bakke is applicable to all higher education admissions procedures, financial aid decisions are dissimilar. This interpretation rests upon the fact that financial aid considerations are separate from and generally subsequent to admissions decisions. As such, Bakke stands for the proposition that diversity in education is a legitimate and important objective, subject to certain restrictions.

Opponents of minority-designated scholarships now argue that since minority-designated scholarships may determine who will be enrolled, such financial aid is indeed comparable to admissions and hence governed by Bakke. Supporters of minority-designated scholarships counter that even if this were true, Bakke prohibits only

inflexible quotas not mere consideration of race as a factor. But opponents point out that such scholarships utilize race not simply as a factor but as a criterion. Therefore, they argue, Bakke is applicable.

The root of the issue

In essence, the core of the debate is that affirmative action has (or has not) been effective, has (or has not) accomplished its goals, and now should (or should not) be discontinued. Either minority students are presently able to compete on an even basis with their non-minority peers, or they are still hampered by an inherent societal disadvantage.

The underlying debate is on whether the civil rights struggle, affirmative action, and benevolent government have accomplished racial equality, or at least equity of opportunity. If not, then there is still reason for maintaining minority-designated scholarship programs, and the Education Department's proposed policy will almost certainly further limit the access of minorities to education, eroding the considerable yet incomplete advances which have been made in civil rights.

Many advocates of minority-designated scholarships believe the present debate is not so much a dutiful correction of a legal misinterpretation as a purposefully manufactured controversy intended to disempower minorities and maintain the political status quo. The reinterpretation, they say, is an intentional effort to discourage the academic and political enfranchisement of minorities. It is a purely political move to court right-wing support and play upon racial divisions while diverting attention from the need for increased education funding to fears of quotas. They argue that the Education Department understands fully what Congress intended by Title VI, but is determined to accomplish contrary ends by misconstruing that section into a contrived legal issue.

The debate over the legality of minority-designated scholarships under present law begs the question in a sense, since the law could be changed if a need is demonstrated for such programs. A legal decision on minority-designated scholarships is likely to emerge soon from legal test cases. Once the present legal status of such programs is temporarily clarified by the courts, Congress may renew its commitment to continued affirmative action. If minority-designated scholarships are found in violation of Title VI, Congress can enact an exception.

The argument is not so much one of right and wrong, but of degree. The debate around minority-designated scholarships is delicate and explosive, because it affects so deeply the lives of those students concerned and because it exists in the nebulous region between affirmative action and reverse discrimination.

Efforts to remedy the present effects of our society's history of racial discrimination are limited by the prevailing opinion that one group of students can succeed only at the expense of another group. What is truly required is the development of an understanding that the advancement of one group need not be a triumph over another.

*For additional copies of **Minority Scholarships: Affirmative Action or Reverse Discrimination?**, or ASPIRA's other publications in its* **Issue Briefs** *series, **National Testing: The National Debate**, and **School Choice: Pros, Cons, and Concerns**, write to Publications at the ASPIRA National Office. First copies are free; additional copies are available for 50¢ per copy. You may also request further information on other ASPIRA publications or on the ASPIRA quarterly newsletter.*

ASPIRA Association, Inc.
National Office
1112 16th Street, NW, Suite 340
Washington, DC 20036

Nonprofit
Organization
U.S. Postage
PAID
Permit #1531
Washington, D.C.

BEST COPY AVAILABLE